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Legal Regulation of Prosecutorial Supervision Over Activities for The Prevention of Neglect and Delinquency Among Minors

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Abstract

The article is devoted to the legal regulation of prosecutorial supervision over activities for the prevention of neglect and delinquency among minors in the Republic of Uzbekistan. Using the formal-legal, systemic and comparative-legal methods, it reveals the concept, subject matter, objects and limits of this type of supervision, and distinguishes it from the coordination of law-enforcement activity, departmental control and judicial control. Drawing on the Russian Federation, the Republic of Kazakhstan and Germany, it shows alternative models for allocating supervisory and social-protection functions.

Keywords: Prosecutorial supervision; prevention of neglect; juvenile delinquency; subject matter of supervision; limits of supervision; subjects of prevention; comparative law; Republic of Uzbekistan.

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1. Introduction

The relevance of this study stems from the fact that, despite the existence of a special Law of 29 September 2010 No. ZRU-263 “On the Prevention of Neglect and Delinquency among Minors” [3] and a departmental order of the Prosecutor General [6], the legal standing of the prosecutor as a subject of supervision remains insufficiently defined: neither act contains a legal definition of the subject matter, objects and limits of supervision, which creates a risk of both an unjustified expansion of powers and their merely formal exercise.

The legal basis is formed by a multi-level, but internally not fully coherent, system of acts. The Constitution establishes the State’s duty to care for the upbringing of a physically and spiritually healthy generation and to protect the interests of mother and child [1]. The general powers of the prosecutor’s office are defined by the Law “On the Prosecutor’s Office”, which assigns to the subject matter of supervision the precise and uniform enforcement of laws by ministries, agencies, hokimiyats, institutions and officials irrespective of subordination [2]; this Law contains no special provisions on supervision specifically over the prevention of neglect and delinquency among minors, and is therefore applied here under the general, rather than a special, rule.

The special act is the Law “On the Prevention of Neglect and Delinquency among Minors” No. ZRU-263, which defines the objectives and principles of prevention and the system of its subjects — the crime-prevention units

of the internal affairs bodies, the inter-agency commissions for minors' affairs, specialised educational institutions, and the guardianship, education and social-welfare authorities [3]; it does not expressly single out the prosecutor's office as an independent subject of supervision, deferring in this respect to the general legislation on the prosecutor's office. The Law "On the Prevention of Offences" of 14 May 2014 No. ZRU-371 contains a separate article on the prevention of neglect among minors that refers back to Law No. ZRU-263 [4], creating an overlap of subject matter between the two laws. The Law of 7 January 2008 No. ZRU-139 "On Guarantees of the Rights of the Child" establishes children's rights and the corresponding obligations of public authorities, including the guardianship authorities [5], but likewise does not define the prosecutor's powers.

The direct procedure for organising supervision is established by the Prosecutor General's order of 11 September 2017 No. 139 [6] — a departmental, not a legislative, act, which in legal force is subordinate to the laws defining the competence of the supervised subjects, and therefore cannot substitute for the absence of a statutory definition of the subject matter and limits of supervision. The systemic link between the legislation on the prosecutor's office and that on the prevention of delinquency among minors is secured in practice but not fixed normatively: neither the Law "On the Prosecutor's Office" nor the Law "On the Prevention of Neglect and Delinquency among Minors" No. ZRU-263 contains cross-referencing provisions that expressly establish the prevention of neglect as an independent subject matter of supervision.

The subject matter of supervision, derived from the general provision of the Law "On the Prosecutor's Office" [2] as applied to the objects listed in the Law "On the Prevention of Neglect and Delinquency among Minors" No. ZRU-263 [3], is the precise and uniform enforcement of legislation on the prevention of neglect and delinquency among minors by the internal affairs bodies and their specialised units, the inter-agency commissions for minors' affairs, specialised educational institutions, and — within their competence — the education, guardianship and social-welfare authorities. The objects of supervision are not minors themselves, but the bodies and institutions obliged to enforce preventive legislation; this distinguishes the subject matter of supervision from the subject matter of prevention itself, which consists of the causes and conditions of neglect.

The limits of supervision are defined by the substantive criterion — the prosecutor may assess the lawfulness, but not the expediency, of preventive and educational measures; by the subject-based criterion — supervision does not extend to the substantive activity of the subjects of prevention, covering only the lawfulness of their acts; and by the procedural criterion, flowing from the Law "On the Prosecutor's Office" [2] — an inspection must not substitute for the ongoing activity of the supervised bodies. Current legislation does not vest the prosecutor with the power to independently decide on the application of individual preventive measures, the placement of a minor in a specialised institution, or a change in the conditions of upbringing — these powers are reserved to the inter-agency commissions and the courts, the prosecutor's role being limited to supervising the lawfulness of their exercise [3]; ascribing broader powers to the prosecutor's office would not correspond to the regulation in force.

Prosecutorial supervision must be distinguished from: the coordination of law-enforcement activity, aimed at aligning actions rather than assessing their lawfulness [2]; departmental control, a form of internal managerial oversight; judicial control, which carries final legal force; and the prosecutor's procedural activity in criminal proceedings, triggered where there are indications of an offence, whereas supervision over prevention operates at an earlier, pre-judicial stage. The specificity of supervision in this field lies in its inter-agency object, in the heightened guarantees required by the age-related vulnerability of minors, and in its preventive, rather than remedial, orientation.

The forms through which supervision is exercised are: inspections of the enforcement of legislation by the subjects of prevention, examination of complaints, the demand of documents and explanations, the issuance of acts of response (protest, representation, caution) and, where indications of an offence are present, the institution of the corresponding proceedings [2]. Order No. 139 elaborates these powers as applied to minors, directing prosecutors to identify and eliminate the causes and conditions conducive to neglect [6].

At the same time, the regulation contains no criteria for distinguishing a systemic violation from an isolated enforcement shortcoming, and establishes no procedure for monitoring the actual execution of acts of response specifically in this field — the general procedure applies [2]. Nor are there criteria delimiting necessary intervention from intervention that risks stigmatising a minor or improperly disclosing information about them.

The UN Convention on the Rights of the Child of 1989, ratified by Uzbekistan in 1992, enshrines the principles of the best interests of the child, non-discrimination, respect for the child's dignity and the right to be heard (Arts 3, 12) [7].

The International Covenant on Civil and Political Rights establishes the right of every child to the measures of protection required by his or her status as a minor, on the part of the family, society and the State (Art. 24) [8], and is likewise legally binding on Uzbekistan in this respect.

The Beijing Rules of 1985 [9] and the Riyadh Guidelines of 1990 [10] are recommendatory in character; the principles of proportionality of intervention and of the priority of social preventive measures over formal response that they enshrine are nonetheless significant for interpreting national norms and assessing the limits of supervision. General Comment No. 24 (2019) of the UN Committee on the Rights of the Child, which replaced General Comment No. 10 (2007), points to the priority of measures not involving formal proceedings whenever this serves the best interests of the child and does not threaten public safety [11]. While creating no new obligations, it orients States, including Uzbekistan, toward the principle of minimum intervention — treating prosecutorial response as a measure of last, rather than first, resort.

In the Russian Federation, supervision over the enforcement of legislation on minors is governed by the Prosecutor General's Office order of 13 December 2021 No. 744, which covers both the prevention of neglect and the broader range of issues concerning minors' rights within a single act [12]. The advantage of this model is uniform methodological guidance; its limitation is the same structural blending of the subject matter of supervision over prevention with that of supervision over children's rights in general that characterises Uzbek regulation, which reduces the practical value of the Russian experience as a model for direct borrowing.

Kazakhstan has pursued institutional, rather than merely normative, specialisation: by Presidential Decree of 23 August 2007 No. 385, specialised inter-district courts for minors' affairs were established, extended to all regional centres by 2012 [13]; a corresponding specialisation has been created within the prosecutor's office, operating in cooperation with these courts. The limits of prosecutorial intervention in Kazakhstan are determined not only by statute but also by the existence of a specialised judicial body to which the prosecutor refers disputes concerning minors' rights — a separation of the functions of supervision and of adjudication on the merits that is absent from the Uzbek model.

In Germany, the powers of early risk identification for neglect are vested by Book VIII of the Social Code not in the prosecutor's office but in the youth welfare offices (Jugendamt), which use intervention by the family court as a measure of last resort [14]; the prosecutor's office is engaged not as a standing supervisor of these agencies but as the authority for criminal prosecution where indications of a crime are present. The advantage of this model is a clear separation of the social-preventive and criminal-prosecuting functions, consonant with the principle of minimum intervention [10; 11]; its limitation for Uzbekistan is the absence of a comparably developed system of municipal social services, which makes direct institutional borrowing unrealistic without first strengthening the social service at local level.

Comparison of the three models shows that the realistic direction for Uzbekistan is neither wholesale adoption of the German model nor reproduction of the Russian structural blending, but a partial adaptation of the Kazakh experience: the normative establishment of a clearly defined subject matter of supervision specifically over the prevention of neglect, following the example of specialisation, while retaining the existing organisational structure of the Uzbek prosecutor's office.

The analysis allows the following problems, confirmed by the content of the acts, to be identified. First, the subject matter and limits of supervision are not defined at the level of statute: the only elaboration is contained in departmental Order No. 139 [6], which does not accord with the requirement of certainty of a State body's powers. Second, Law No. ZRU-263 [3] and the Law "On the Prevention of Offences" [4] contain partially overlapping provisions without determining priority in the event of conflict. Third, there is no procedure for monitoring the actual execution of acts of response specifically concerning the prevention of neglect — the general procedure applies [2], without regard to the inter-agency character of the object. Fourth, no guarantees of confidentiality of information about a minor, nor criteria of proportionality of intervention, have been established, which creates a gap from the standpoint of the principle of minimum intervention [10; 11].

Since the subject matter and limits of supervision are currently derived only from the general provision of the Law "On the Prosecutor's Office" and from departmental

Order No. 139 [2; 6], the first and foundational step should be to include in Law

No. ZRU-263 a separate article expressly defining the subject matter of prosecutorial supervision and its limits according to the substantive and subject-based criteria set out in Section 2 of this article — at the legislative level, with the expected outcome of eliminating the uncertainty of competence and the guarantee of an express prohibition on the prosecutor substituting for decisions reserved to the inter-agency commissions and the courts. Since such a clarification of the subject matter of supervision would lose its meaning while the conflict persists between Law No. ZRU-263 and the Law "On the Prevention of Offences", Article 27 of which refers back to the former without removing the overlap of subject matter [3; 4], the same legislative act should also remove from the Law "On the Prevention of Offences" the duplicating provisions, confirming Law No. ZRU-263 as the special act on matters concerning minors — which would yield a single, non-contradictory procedure

for every case. Further, since even a clearly defined subject matter of supervision does not by itself guarantee that violations will be eliminated where there are multiple subjects of prevention and no procedure for monitoring the actual, rather than formal, execution of acts of response — today the general procedure under the Law "On the Prosecutor's Office" applies, without regard to the inter-agency character of the object [2] — at the inter-agency level a joint act of the Prosecutor General's Office and the interested agencies should establish a procedure for monitoring the elimination of identified violations, setting deadlines and a form of confirmation that must indicate how the elimination of the violation affected the situation of the specific minor concerned, without excessive detail that would compromise confidentiality; this would secure a shift from counting acts of response to tracking violations actually eliminated. Since, in addition, no criteria of proportionality of prosecutorial intervention or guarantees of confidentiality during inspections have been established, at the departmental level Order No. 139 [6] should be supplemented with a section on the principle of minimum intervention, obliging the prosecutor to weigh intervention against the best interests of the specific minor, together with rules against disclosing information about the minor beyond what is necessary [6; 10; 11], which would reduce the risk of formal or excessive intervention. Finally, since reporting continues to be built on statistics of inspections and acts issued rather than on actual changes in children's circumstances, the Prosecutor General's Office should adopt, by methodological guidance, qualitative criteria to supplement the quantitative indicators — the proportion of violations actually eliminated and the recurrence of identical violations by a single subject of prevention — which would allow a shift from a presumptive to an objective assessment of the effectiveness of supervision, oriented toward the real situation of children.

Prosecutorial supervision over activities for the prevention of neglect and delinquency among minors in Uzbekistan possesses a distinct legal nature that sets it apart from coordination, departmental control and judicial control, yet its subject matter and limits are defined not at the legislative but at the departmental level, which does not fully meet the requirement of normative certainty of a State body's powers. Comparative analysis of the Russian, Kazakh and German models shows that the realistic direction for Uzbekistan lies not in institutional borrowing from abroad but in the statutory consolidation of the subject matter and limits of supervision, the removal of the conflict between Law No. ZRU-263 and the Law "On the Prevention of Offences", the creation of an inter-agency procedure for monitoring the actual elimination of violations, and the entrenchment of the principle of minimum intervention.

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